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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,221	08/04/2003	Peter D. Roberts	LSBC-0137-CP04B	1497
27860 7590 02/22/2008 LARGE SCALE BIOLOGY CORPORATION 3333 VACA VALLEY PARKWAY SUITE 1000 VACAVILLE, CA 95688				
EXAMINER ZHENG, LI				
ART UNIT 1638		PAPER NUMBER		
MAIL DATE 02/22/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/634,221

Applicant(s)

ROBERTS ET AL.

Examiner

LI ZHENG

Art Unit

1638

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Elizabeth F. McElwain/
Primary Examiner, Art Unit 1638

Continuation of 11, does NOT place the application in condition for allowance because: Claims 13-14, and 16-19 remain rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a bipartite RNA viral vector, which comprises any modified tobavirus RNA-1 comprising a first foreign RNA sequence encoding all or part of putrescine N-methyltransferase, wherein said first foreign RNA sequence is operably linked to the 3' end of the stop codon of the RNA sequence that encodes for a 16 kDa cysteine-rich protein of RNA-1, and any modified tobavirus RNA-2 comprising a promoter-gene construct comprising a subgenomic promoter operably linked to a second foreign RNA sequence encoding all or part of putrescine N-methyltransferase, wherein said promoter-gene construct is inserted in place of the 2C gene, does not reasonably provide enablement for said bipartite RNA viral vector wherein the first and second foreign RNA sequence encode all or part of any Nop 10-like small nucleolar ribonucleoprotein, any DEAD box RNA helicase, any methionine synthase, any PRP 19-like splicing protein, any CRS2 protein, or any GTP-binding protein. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims, for the reasons of record stated in the Office action mailed February 27, 2007. Applicants traverse in the paper filed January 17, 2008. Applicants' arguments have been fully considered but were not found persuasive.

Applicants presented similar arguments to those in previous response file 7/28/07, therefore for the same reason stated in previous office action filed 10/18/07, the rejection is maintained. In addition, Applicants argue that claim 13 is not limited to a specific utility, however, Applicants still need to enable at least one of them. The enabled utility needs to be specific and substantial. With respect to the teaching of Example 14, applicants argue that although these morphological features may not appear to be desirable at first glance, these changes derive from the genetic and biochemical changes that occurs as a result of using the vector. However, undue experimentation would be required for a person skilled in the art to use the claimed vector to obtain a desirable trait. The fact that the vector can be used for research is not a specific utility.